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No. 604

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

BERTRAND A. O. TYSON, M.D.,
Petitioner,

versus

STATE OF LOUISIANA
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Petitioner respectfully prays that a Writ of Certiorari issue to review the decree of the Supreme Court of Louisiana entered in the above mentioned cause on June 28, 1965, which denied petitioners application for Writs of Certiorari, Mandamus and Prohibition, thus affirming the conviction of petitioner rendered by the Nineteenth Judicial District Court of East Baton Rouge Parish, Louisiana (herein called Louisiana District Court) on June 2, 1965.

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, Baton Rouge Division, remanded the removal of petitioners prosecution. (Appendix A) Petitioner appealed this order of remand to the United States Court of Appeals for the Fifth Circuit. That court vacated its order to stay the state prosecution pending

the appeal of the order of remand. (Appendix B & C) This court, by Justice Hugo L. Black, denied petitioners application for a stay of the state prosecution pending appeal of the order of remand on May 28, 1965. (See T. 104)

The Nineteenth Judicial District Court of East Baton Rouge Parish found petitioner guilty for oral reasons assigned (T. 150-157) on June 2, 1965, and on June 4 of that year, sentenced the petitioner to pay a fine of $100 or spend 60 days in the Parish jail in lieu thereof, and to four months in the Parish jail in addition to the fine. Since the sentence did not reach 6 months and/or the fine exceed $300, under Louisiana law the petitioner had no right of appeal from his conviction.[1] Petitioner then proceeded by discretionary application, to obtain a review of the record. The Supreme Court of Louisiana denied petitioners application for Writs of Certiorari, Mandamus and Prohibition on June 28, 1965. (Appendix I)

JURISDICTIONAL STATEMENT

The verdict of the Louisiana District Court was rendered at the close of petitioners trial, June 2, 1965. Petitioners motion for a new trial was overruled on June 4, 1965. Petitioners application to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition was refused June 28, 1965.

The jurisdiction of this court is asserted on the basis of 28 U.S.C. 1257(3).

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[1]At no stage of the state proceeding did the petitioner have a right to a review of the trial proceedings and the decision of the Louisiana District Court. Louisiana Constitution, Article 7, Section 10.

QUESTIONS PRESENTED

I

Whether the application of the Louisiana statute making criminal the Unauthorized Use of a Movable, which, on the face of the statute and according to the intent of the legislature was never meant to apply to a lessee holding over after the expiration of a valid lease, can constitute a "planned prosecutorial abuse" in denial of petitioners rights under the Constitution and laws of the United States.

II

Whether the term "consent" as used in the criminal statute can be judically construed in a manner inconsistent with the terms of the Civil Laws of the State of Louisiana applicable to a lessee holding over after the term of a valid lease without denying petitioner his constitutional right to fair notice.

III

Whether petitioner can be convicted of an unauthorized use of a movable where the statute on its face requires a general criminal intent when he acted pursuant to the terms of a valid civil law giving him the authority to remain in possession and use of the movable.

IV

Whether petitioner can be convicted of the use of a movable without the consent of the owner when no evidence was offered which could support a conviction under the terms of the criminal statute.

V

Whether petitioner, being a member of a class of persons active in efforts to secure full and equal rights for Negroes in the State of Louisiana, is denied the equal

protection of the laws when he is singled out for the application of a criminal statute which on its face clearly shows that it was not meant to apply to a lessee holding over after the expiration of the term of a valid lease.

STATUTE INVOLVED

Petitioner was convicted of continuing in possession and use of an automobile without the authority of its owner in alleged violation of the laws of Louisiana. The applicable statute is Louisiana Revised Statutes, Title 14, Section 68.

> Unauthorized use of movables is the intentional taking or use of any movable which belongs to another, either without the other's consent, or by means of fraudulent conduct practices or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable, according to the law pertaining to civil matters, is immaterial.
>
> Whoever commits the crime of unauthorized use of movables shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both.

STATEMENT

Petitioner is a practicing physician and Negro citizen of Louisiana and of the United States, and was an active leader in protests against discrimination in 1963 and 1964, and in efforts to abolish restrictions on the rights of Negro people to vote and enjoy other benefits of citizenship.

On November 20, 1965, petitioner signed a lease agreement with Avis Rent-A-Car, located in the town of Baton Rouge. Under the terms of the lease he was to have possession and use of the car for three days. (R. 86-A).

Petitioner did not return the car within the appointed time, but continued to possess and use it without interference or complaint from the rental agent until January 4, 1965. At that time petitioner held a telephone conversation with Mr. Roy B. Bowers ,the rental agent for the Avis company. Mr. Bowers requested that petitioner return the car by January 8, 1965. When this was not done, petitioner and Mr. Bowers again communicated by telephone on January 15, 1965. At this time Mr. Bowers demanded that either the car be returned on the following day or he would be forced to "swear out a warrant." Petitioner returned the car on January 21, 1965, (R. 86-A) and was charged the company's monthly rate for the use of the car during the period. (T. 142-145). At no time did the petitioner receive any written notice informing him that the statutory lease period was being terminated.

On January 18, 1965, Mr. Bowers caused a warrant to issue for the arrest of the petitioner under the authority of Mr. Sargent Pitcher, District Attorney of East Baton Rouge Parish. Petitioner was arrested and charged under a Bill of Information, as amended, for the "Unauthorized Use of a Movable" on or about the 18th day of January, 1965.

HOW FEDERAL QUESTIONS WERE RAISED

The federal questions here presented were raised in petitioners application for removal to the Federal Dis-

trict Court, (Appendix D), petitioners affidavit submitted to the Federal District Court, (Appendix E), and petitioners application to the Federal District Court for the production of records (Appendix F). The removal was remanded, by Judge West to the Nineteenth Judicial Court for trial. (Appendix A)

The Federal Questions were again raised in petitioners application to the Court of Appeals for the Fifth Circuit for a stay of the remand order pending appeal (Appendix G.) The application was denied. (Appendix B & C)

Petitioner again raised his federal claims in his motion to quash the Bill of Information (R. 83), at the close of trial (T. 150-152), in his motion for a new trial (R. 94), and in his Bill of Exceptions in support of his application to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition. (R. 54-63).

Petitioners federal claims were thus raised at the earliest opportunity and were renewed at each stage of the proceedings below.

REASONS WHY THIS COURT SHOULD GRANT THE WRIT

This case is but another chapter in the tortious struggle of the Negro people of the State of Louisiana to secure for themselves the full and equal enjoyment of the rights and duties of citizenship of that state and of the United States. It is common knowledge that many methods have been used to discourage leaders from engaging in activity to promote the efforts of Negro people to secure for themselves what the Constitution, laws, and this court have said is their due. Indeed, this court

has specifically recognized on many occasions that the otherwise valid functioning of the judicial process may be, in a particular instance, no more than a tool to penalize and discourage such activity. *Dombrowski v. Pfister, 380 U.S. 479* (1965); *Cameron v. Johnson*, 33 L.W. 3395, 3397 (1965); (dissenting opinion). And see the per curiam opinion of the Court of Appeals for the Fifth Circuit in *Cox v. Louisiana*, No. 22,657 (June 29, 1965).

By the above noted cases and by its many other opinions, this court has demonstrated a willingness to look carefully at the record of relatively small cases which, if ignored, would set a precedent encouraging the use of state criminal prosecutions to harass and intimidate unpopular persons. As the appendix and the body of the petition amply demonstrate, a leader in the effort to gain Negro equality can never be certain that his most mundane business dealings will not grow into protracted criminal prosecutions.

Therefore, the petitioner urges that this court grant this petition for a Writ of Certiorari to enable him to have at least one hearing on the serious legal issues involved.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND THE PRESENTATION OF UNDECIDED QUESTIONS OF LAW

I

Petitioner was convicted by the Louisiana District Court of the Unauthorized Use of A Movable under L.R.S. 14:68, *supra*. While it is true that petitioner lacked the *verbal consent* to remain in possession of the car, (T. 147-

149) he was not without legal authority to do so under the applicable Louisiana laws. Indeed, by charging him a monthly rate the company tacitly admitted that his use was authorized. (T. 144-147) Louisiana Civil Code Article 2669 provides:

> *Lease* or *hire* is a sylallagmatic contract, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor, at a fixed price.

Article 2670 provides:

> The letting out of things is of two kinds, to wit:
>
> 1. The letting out of houses and movables (which is called a lease for rent).
> 2. .....

Article 2727 provides:

> The lease ceases, of course, at the expiration of the time agreed on.

Article 1817 provides:

> Silence and inaction are also, under some circumstances, the means of showing an assent that creates an obligation; if after the termination of a lease, the lessee continues in possession, and the lessor be inactive and silent, a complete mutual obligation for continuing the lease is created by the act of occupancy of the tenant on the one side, and the inaction and silence of the lessor on the other

Article 2686 provides:

> The parties must abide by the agreement as

> fixed at the time of the lease. If no time for its duration has been agreed on, the party desiring to put an end to it must give notice in writing to the other, at least 10 days before the expiration of the month, which has begun to run.

Thus the laws of Louisiana make it quite clear that the petitioner was in possession and use of the car under a valid claim of right established by law. Civil Code Article 1817, *supra*, works to revive the terms of the lease with the exception that the term is by the month. This is called "tacit reconduction." *Sharpe v. Jenkins*, 150 So. 2d 563 (La. App. 1963); *Nagen v. Foret's Drug Store, Inc.* 162 So. 2d 354 (La. App. 1964). His rightful use and possession of the car could only be terminated by compliance with the terms of the applicable civil statutes. Se Civil Code Article 2686, *supra*. (But *cf.* T. 135-137)

The foregoing provisions of the Civil Code must all be read in conjunction with the criminal statute when construing the latter. The criminal code (L.R.S. 14:3) provides in relevant part:

> . . . all of (the criminal code) provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provisions.

Civil Code Article 17 provides:

> Laws in *pari materia*, or upon the same subject matter, must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another. [Cf. L.R.S. 1:3]

The Louisiana jurisprudence also is quite clear on the point that when the lessee holds over after the expiration of the term of a valid lease, the lease is renewed with the exception that the period is monthly. *Bowles v. Lyon*, 6 Rob. 262 (1843); *Powell v. Smith*, 62 So. 2d 671 (La. App. 1953); *Herring v. Bredlove*, 222 La. 1088, 64 So. 2d 441 (1952); *Board of Levee Comm. of Orleans Levee District v. Magee Aircraft Co., Inc.*, 77 So. 2d 239 (La. App. 1955); *Nagen v. Foret's Drug Store, Inc.*, *supra*; *Sharpe v. Jenkins*, *supra*.

The effort by the state in this case to make criminal the behavior of the petitioner when the same behavior is clearly contemplated as lawful and sanctioned by the terms of the civil law of Louisiana can only be explained as a "planned prosecutorial abuse of a (state criminal) statute." *Cox v. Louisiana*, No. 22, 657 (5th Cir., June 29, 1965), citing *Dombrowski v. Pfister*, 380 U.S. 479 (1965), and *Cameron v. Johnson*, 33 L.W. 3395, 3397 (1965).

II

The provisions of the Louisiana Civil Code as set forth above directly contradict the provisions of the criminal statute as the state seeks to apply it to this case. There are two constitutional objections to this situation: *First*, a person can not possibly be expected to be aware of the kind of conduct made criminal by the provisions of the criminal statute in that the criminal statute does not itself define "consent," and other provisions of Louisiana law permit the behavior here sought to be made criminal. Thus a basic principle of constitutional law is violated. *United States v. Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939);

Connally v. General Construction, 269 U.S. 385, 391 (1926); *Winters v. New York*, 333 U.S. 507,519 (1948); *Herndon v. Lowry*, 301 U.S. 242, 259 (1937); *Baggett v. Bullett*, 377 U.S. 360, 368, 373 (1964), (as applied here petitioner is being subjected to punishment for a different kind of "guiltless, knowing behavior"); *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963); *Screws v. United States*, 325 U.S. 91 (1945).

Secondly, where the terms of the statute are otherwise clear, a court may not, by retroactive judicial construction, make the statute apply to conduct not fairly within the terms of the statute in the absence of judicial construction. *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964). And see Note, 109 U. of PA.L.REV. 67, 73-74 n. 34 (1960).

Petitioner is well aware that the inquiry here is not the same as that in cases where the claim is that the conduct is constitutionally protected. Nevertheless, the existence of two valid and contradictory state laws gives rise to the question of whether the State of Louisiana may constitutionally permit and at the same time make criminal the same behavior. Petitioners behavior is always protected from arbitrary action by the state.

This is not a case where the faults in the statute or in its application may be saved by the existence of a requirement of specific intent. Cf. *Screws v. United States, supra.* L.R.S. 14:11 provides in relevant part:

> . . . However, in the absence of qualifying provisions, the terms "intent" and "intentional" have

> reference to "general criminal intent." [See L.R.S. 14:10(2) *infra.*]

Louisiana law specifically recognizes that where an accused relied on a valid law as a guide to behavior, such reliance shall constitute a complete defense in a criminal prosecution based on the same behavior. L.R.S. 14:17(1) provides:

> . . .
>
> (1) Where the offender reasonably relied on the act of the legislature in repealing an existing criminal provision, or in otherwise purporting to make the offender's conduct lawful; . . .
>
> . . .

There should be no question but that the relevant civil law provisions certainly purport to make petitioners conduct lawful.

III

This court has held that the element of scienter is the rule rather than the exception to the principles of Anglo-American jurisprudence. *Smith v. California*, 361 U.S. 147, 150 (1959). The court has also recognized that in some cases it is within the power of the state to define a crime absent the element of scienter, e.g. *United States v. Balint*, 258 U.S. 250, 42 S. Ct. 301 (1922). In this case Louisiana has not so attempted, but has defined a crime which requires for its operation "general criminal intent." L.R.S. 14:11 *supra*. L.R.S. 14:10(2) provides:

> General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the

> ordinary course of human experience, must have adverted to the criminal consequences as reasonably certain to result from his act or failure to act.

Given the provisions of the civil law of Louisiana, the state could not have shown the existence of general criminal intent in the petitioner. Indeed, the only way in which the state could have overcome the existence of the civil law provisions and the terms of the criminal provisions was by proving at trial *specific* criminal intent. As is amply shown by the record, this was not done.

IV

It is an elementary requirement of procedural due process that some evidence be introduced which could support a conviction under a criminal statute. But the petitioner in this case was held responsible under a criminal statute when the "charges against him were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment." *Thompson v. Louisville*, 362 U.S. 199 (1960); *Garner v. Louisiana*, 368 U.S. 157 (1962).

V

Petitioner was "singled out" for the enforcement of this statute due to his historic activities as a leader in the efforts of his community to obtain full and equal enjoyment of the rights of citizenship. The statutory history of L.R.S. 14:68 and the few cases that have dealt with it (Appendix H), demonstrated beyond doubt that the statute was not meant to apply to the facts of this case.

Oyer v. Boyles, 368 U.S. 448 (1962) is inapposite. Petitioner is not claiming that he was singled out for enforcement while other offenders are not prosecuted. Rather, petitioner is claiming "that the selection was deliberately based upon an unjustifiable standard such as race, ..." *Oyer v. Boyles, supra* at 456. Cf. *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

IMPORTANCE OF THE FEDERAL QUESTIONS

The assault on the citadel of Negro segregation, fear, and poverty proceeds apace, but resistence to these efforts continues in violation of fundamental law. This court can not overlook such violations merely because they are manifested in sophisticated or clandestine fashion. *Terry v. Adams*, 345 U.S. 461 (1953). Indeed, the use of the criminal process to discourage and harass persons engaged in protests and other activities is perhaps the most serious sort of violation of fundamental law.

This court has shown itself ready to stand against the improper use of criminal sanctions by local government. Where liberty is at stake, the size of the penalty is never at issue.

Further, the approach to the criminal law taken by the lower courts in this case present significant questions of the construction of criminal statutes. The fundamental requirement of notice, broadly stated, is the difference between free society and arbitrary rule.

Man's activities in his daily life must be viewed by the legal process as integral rather than disjointed. Laws

must be construed with a view to all of man's activities in his society, rather than as applicable to a particular phase of his life depending on the nature of the body of rules. This is a rule of construction superior to any technical or particular rules of construction.

Petitioner's research discovered no case in which this court has reached the question of the constitutional sufficiency of construing criminal statutes without regard to other applicable state laws. That question is clearly presented here.

APPENDIX A.

IN THE
UNITED STATES DISTRICT COURT
EASTERN DIVISION OF LOUISIANA
BATON ROUGE DIVISION

CRIMINAL ACTION

No. 1585

STATE OF LOUISIANA,

Appellant,

versus

DR. BERTRAND A. O. TYSON,

Appellee.

Defendant, Bertrand A. O. Tyson, has been charged in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, with the violation of a state criminal statute pertaining to the unauthorized use of a movable. This charge, preferred by way of bill of information filed by the District Attorney of the Parish of East Baton Rouge, Louisiana, pertains to an alleged violation of the criminal statutes of the State of Louisiana, particularly, Revised Statutes 14:68. Defendant is charged with having used an automobile

belonging to Avis Rent-A-Car, without authority of the owner, and the owner of the vehicle, through its president, Roy B. Bowers, is the complaining witness. When arraigned in the state court, defendant, through counsel, pleaded not guilty. Thereafter, defendant filed a motion to quash and an application for a bill of particulars. The trial court denied the motion to quash, and when the application for the bill of particulars came on for hearing, the District Attorney voluntarily agreed to furnish the defendant all of the information requested. This was done, and the information requested was filed in the record. After the defendant's motion to quash was denied, he filed a petition to remove the case from the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, to this court, ostensibly pursuant to the provisions of Title 28 USC 1443. A motion to remand was then filed by the State of Louisiana, and it is that motion which came on for hearing before this court on May 6, 1965. After hearing arguments of counsel, the court granted the motion to remand, and now assigns the following reasons therefor.

The defendant Tyson is a Negro resident of Plaquemine, Louisiana, who has been active in the civil rights movement in this area. The present criminal charge against him, i.e., unauthorized use of a movable, has nothing whatsoever to do with civil rights. Nevertheless, the defendant contends that he cannot get a fair trial on this charge in the courts of the State of Louisiana. The removal petition filed in his behalf is a hodge-podge of nonsense. For example, defendant, who is merely charged under the state law with the offense of having used an automobile without the consent of its owner and with having refused to return the vehicle after having been

requested to do so, all in violation of the laws of the State of Louisiana, and particularly in violation of R.S. 14:68, now claims in his removal petition that if he is *tried* for this offense in a state court, it will deprive him of the exercise of his right of freedom of speech, of his right to freely assemble, of his right to petition the Government for the redress of grievances, of the privileges and immunities guaranteed by the United States Constitution, of his right to disseminate information concerning the means of registering to vote, and of his right to urge Negroes to register to vote. He further contends that if he is *convicted* of having violated the state law making it a crime to use a movable without the owner's permission, then such a conviction will "punish him for the exercise of rights, privileges and immunities secured him by the Federal Constitution." His apparent contention is that the United States Constitution guarantees him the right to the unauthorized use of a movable.

Defendant then proceeds to enumerate five additional reasons why he cannot get a fair trial in the state court. These reasons include (1) state court judges are elected and the majority of voters in East Baton Rouge Parish are white persons; (2) Negroes are generally systematically excluded from juries; (The present case pending in the state court is not a jury case, nor has the defendant requested trial by jury.) (3) defendants charged with *civil rights* violations in this Parish usually receive maximum sentences; (4) Negro witnesses are usually addressed by their first name in state courts; and (5) the community is hostile to Negroes.

Ordinarily such a "shotgun" attack on the courts of this Parish and State would not warrant serious com-

ment by this court. But since it is now apparent that the new tactic being employed by counsel representing Negro defendants in this area is to attempt to remove to the federal court every criminal case filed in the state courts against a member of the Negro race, some comment and observations on this practice seems warranted.

Title 28 USCA 1443 provides:

> "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> "(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

This statute, pursuant to the provisions of which defendant has attempted to remove this case to the federal court, has consistently been interpreted by the courts to provide the right of removal, particularly in civil rights cases, where, because of some provision of the state constitution or laws, a person is prevented from asserting or protecting his constitutionally protected rights in the state court, or is, because of such legal impediment, unable to obtain a fair determination thereof. The mere fact that there may be some local, individual prejudice

against a defendant, does not necessarily give rise to a right of removal. In the instant case, there is no allegation by the defendant that there is any state statute or state constitutional provision which would in any way prevent him from asserting his federally guaranteed rights or from receiving a fair trial in the state court wherein he is charged. Nor could he validly have made such an assertion. The alleged consequences to the defendant of a trial and conviction in the state court are almost too ridiculous to warrant comment. There is simply no connection between those allegations and the crime with which this defendant is charged.

As for the five specific reasons listed why defendant says he cannot get a fair trial in the state court in this case, little need be said. As Judge Kaufman of the United States Court of Appeals for the Second Circuit has said "Judges are not forbidden to know as judges what they see as men." It would be difficult indeed to find a court, state or federal, which has any more diligently performed its duties in an unbiased, impartial manner, regardless of the nature of the case, or the color of the litigant's skin, than have the state courts of this Parish. There is no state law to prevent the defendant from receiving a fair trial in the state courts of this Parish, and there is absolutely no showing, nor could there be, of any failure on the part of the District Attorney of this Parish, or on the part of the State Court Judge to whom this case was assigned, to perform their duties in an honorable, unbiased, fair, and impartial manner. If defendant has any legitimate reason to allege or claim that the trial judge or the district attorney in this case are biased or prejudiced to the extent of being unable to afford him a fair trial, he is amply protected by the

provisions of Louisiana law pertaining to recusation of judges and district attorneys where bias, prejudice, or personal interest are present. The record of the state court proceedings thus far in this matter clearly shows that every right of this defendant has been zealously protected and preserved by the trial judge. The only complaint defendant really has is that the trial judge refused to grant his motion to quash, and thus dismiss the suit against him. If the trial judge was wrong in this regard, the defendant is amply protected by the appellate procedures available to him. This court is of the opinion that there is only one real objective in filing this removal petition and the many similar ones recently filed in this court. That objective is the complete frustration of the courts in their administration of the criminal laws of the State of Louisiana, particularly in cases where the defendants are members of the Negro race. This objective was clearly identified when the court asked defense counsel, in open court, if it were not true that his real objective was to have all Negroes charged with crime, regardless of the nature of the crime, tried in federal courts and thus relieve the state courts completely of all jurisdiction over such cases, and he replied "that is pretty close to it."

This "Rage to Remove," TIME Magazine, October 30, 1964, p. 88, is simply one more step in the carefully prepared plan of those who would finally eliminate the last vestige of state sovereignty. This latest tactic obviously goes far beyond any sincere effort to protect civil rights. It is designed to completely deprive the various states of the administration of their criminal laws. The next step will obviously be an attempt to include in the area prohibited to the states the administration of their civil

laws. If that could be accomplished, the transition would be complete.

This Court simply cannot, under the guise of protecting civil right, aid and abet such an obvious attempt to use the United States Constitution itself as an instrument by which the same Constitution may ultimately be completely destroyed. The protection of federally guaranteed civil rights is one thing; the virtual scrapping of the United States Constitution is quite another. The constitutionally guaranteed rights of all persons, regardless of their race, creed or color, must be diligently preserved and protected, and this court will use every *legitimate* means at its disposal to do so. But such protection by the courts must just as zealously be confined to that provided for and allowed within the framework of the Supreme Law of the Land, the United States Constitution. Little indeed would be accomplished by using improper means to protect civil rights today, only to destroy tomorrow the very form of government which provides those rights.

Giving lip service to the Constitution is not enough. Its provisions must be regarded as gospel. The exigency of the moment affords no justification for placing strained and unnatural interpretations on otherwise clear and unambiguous language. Under the Constitution, the Congress of the United States has the power to determine the jurisdiction of the federal courts. This jurisdiction has been clearly defined and set forth by various acts of Congress. Title 28 USC 1443 provides for the removal, under certain circumstances, of certain specific types of actions from the state court to the federal court. This court is bound by those provisions. It has no right

to ignore them nor to enlarge upon their scope in the name of civil rights. All powers not delegated specifically by the Constitution to the United States are, by the very terms of the Constitution itself, reserved to the states or to the people. This provision is clear and unambiguous. The right of the federal courts to initially hear matters pertaining to alleged violations of state criminal statutes is not one of those rights granted to the federal courts either by the United States Constitution or by any act of Congress, unless, pursuant to the provision of Section 1443, it is shown that the state court defendant is, by reason of some state law, deprived of his right to enforce his federally protected rights in the course of his trial in the state court. Until such a showing is made, there is, of course, no right of removal to the federal court. *People of the State of New York v. Milton A. Galamison, et al, 342 F. 2d 255 (CA2-January 26, 1965).*

The courts of the State of Louisiana have an absolute, constitutional right to try persons for violation of state criminal statutes. They also have an absolute, constitutional duty to see that all defendants tried before them are fully protected in all of their constitutionally guaranteed rights. As long as the state courts perform that duty and afford all people, regardless of race, creed, or color, a fair and impartial trial, the federal courts cannot deprive them of that right. This court cannot assume that a defendant will be unfairly treated in the state court. Indeed, it must assume the contrary. Until the defendant can show some state law or constitutional provision which would deprive him of the fair trial to which he is entitled in the state court, this court simply

has no jurisdiction over such a case. If, in fact, his rights are not preserved and protected by the state court, the defendant then has access to the federal courts for a review of the state court proceedings. He does *not* have the right to be initially tried in the federal court.

There being no showing whatsoever that the defendant was entitled to remove this matter from the state court to this court, the motion to remand filed by the state was granted.

At the time the motion to remand was granted, the defendant asked that this court issue a stay order staying further prosecution in the state court until such time as this matter could be reviewed on appeal. At the time, there having been no objection made by the state to the stay order, the stay order was granted. However, the court is now of the opinion that the issuance of the stay order was in error. If stay orders in all of these criminal cases which have been removed, and are being removed to this court are granted, the result, i.e., complete frustration of the state court in its administration of its criminal laws, would be almost as completely accomplished as would be the case if this court allowed the removal petitions to stand. While the Court is fully cognizant of the fact that the Civil Rights Act of 1964 amended Title 28 USC 1447(d) to provide that when an action is removed to the federal court under Section 1443, an order remanding the case to the state court from which it was removed is reviewable by appeal. But the fact that it is so reviewable does not mean that in all instances an order staying further proceedings in the state court until the appeal is completed is required. In a case such as this, where the removal is clearly not justified under the

provisions of Section 1443, no such stay order should be granted, and accordingly, the court has issued an order recalling and rescinding the stay order previously issued herein.

Baton Rouge, Louisiana, May 10, 1965.

E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX B.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Criminal Nos. 1585

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

ORDER

CONSIDERING the foregoing motion for stay pending appeal, IT IS ORDERED that the prosecution of Dr. Bertrand A. O. Tyson by the State of Louisiana in this cause be stayed, pending appellate review, or until further orders of this Court.

New Orleans, Louisiana, May ..... 1965.

Judge, UNITED STATES COURT OF APPEAL, FOR THE FIFTH CIRCUIT

VERIFICATION

I, Murphy W. Bell, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the Bar of Louisiana and of the U. S. District Court for the Eastern District of Louisiana.

That I am the duly authorized attorney for petitioner herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are true except such as are stated on information and belief;

That as to subject matter I believe the petition to be true; and

That I sign this verification on behalf of the petitioner because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowledge than the petitioner.

MURPHY W. BELL

Sworn to and subscribed to before me
this 30th day of March, 1965.

NOTARY PUBLIC

APPENDIX C.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH DISTRICT

No. 22571

DR. BERTRAND A. O. TYSON,

Appellant,

versus

STATE OF LOUISIANA,

Appelle.

Appeal from the United States District Court for the Eastern District of Louisiana

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(May 21, 1965)

Before TUTTLE, Chief Judge, EDGERTON* and SMITH**, Circuit Judges.

ORDER ON MOTION TO VACATE STAY OF ORDER OF REMAND

PER CURIAM:

This is a motion by the State of Louisiana to vacate an order staying an order of remand returning this case

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*Senior Circuit Judge of the D. C. Circuit, sitting by designation.
**Of the Third Circuit, sitting by designation.

from the United States District Court for the Eastern District of Louisiana to the State Court, entered by a Judge of this Court on the 12th day of May, 1965. On the papers and showing now presented, it has not been made to appear that there is a reasonable likelihood that this Court, on the merits, will find the District Court's order in error, especially in light of the nature of the allegations which form the basis of removal jurisdiction under Section 1443(1), 28 U.S.C.A.

The motion to vacate the stay order is, therefore, GRANTED, and the stay heretofore granted is, therefore, VACATED.

APPENDIX D.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Criminal No. 1585

DR. BERTRAND A. O. TYSON

Petitioner.

versus

STATE OF LOUISIANA

Respondent.

PETITION FOR REMOVAL OF CRIMINAL ACTION FROM 19TH JUDICIAL DISTRICT COURT, STATE OF LOUISIANA TO THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE, LOUISIANA

I.

1. Petitioner is Dr. Bertrand A. O. Tyson, a physician, a Negro citizen of Iberville Parish, State of Louisiana and of the United States. He holds memberships in the National Association for the Advancement of Colored People, Congress of Racial Equality, and The Afro-American Worker's Defense League, associations of persons engaged in seeking,

by lawful and peaceful means, the equal civil rights of Negroes and all persons in the State of Louisiana and in the United States.

2. On or about November 20, 1964, petitioner went to the Lakeshore Parliament House, a hotel located in Baton Rouge near the State Capitol Building. Petitioner then proceeded through the lobby to inquire of, and rent an automobile, from Avis-Rent-a-Car Company, which maintains offices at said Hotel.

3. Petitioner contracted to lease for an indefinite period, a 1964 Chevrolet Impala, Louisiana license number 381196 and a printed lease form to that effect was duly signed, dated and executed by the parties. Petitioner paid a $50.00 deposit as consideration for the lease agreement and was given the immediate possession of the car.

4. On or about January 15, 1965, the manager telephoned the Petitioner, who lives in Plaquemine, Louisiana, and demanded immediate possession of the leased property. There was some heated discussion, with racial overtones, whereupon petitioner broke off the conversation and hung up the phone.

5. Petitioner was arrested the next day on a warrant from the East Baton Rouge District Attorney's office and subsequently released after posting bail. A criminal bill of Information was later filed against petitioner charging him with violating "on or about January 15, 1965" Louisiana Revised Statute 14:68 (unauthorized use of a movable). Petitioner applied for a Bill of Particulars and moved to quash the

Information. Argument was had and memoranda of law were filed. The State District Court ruled that petitioner must stand trial. Petitioner now seeks to remove.

II.

6. The acts for which petitioner is being held to answer for the offense as charged, are, insofar as the offense charged have any basis in fact, acts in the constitutionally protected exercise of petitioner's right of freedom of speech, assembly, and petition guaranteed by U.S. Constitiutional Amendments I, XIV and 42 U.S.C. Sec. 1983 (1958), which acts are also in the exercise of petitioner's privileges and immunities as a citizen of the United States guaranteed by U.S. Constitutional Amendments. XIV, XV, and 42 U.S.C. Sec. 1985 (1958), and 42 U.S.C., Sec. 1971 (1958) to disseminate information concerning the means of registration for voting in federal elections, and information concerning the federal rights of Negroes to vote in all elections without abridgement by reasons of race, and to urge Negroes having the qualifications of voters to register for voting in all such elections. Petitioner further contends that the Civil Right Act of 1964 protected his right to enter into the Lakeshore Parliament House Hotel to contract therein and enjoy the full and equal services of its facilities, privileges, advantages and accommodations without discrimination, intimidation, threats, coercion, or attempts to punish. Insofar as the crime charged against petitioner is based on allegations of conduct not protected by the federal Constitution and laws cited, those allegations are

groundless in fact. Conviction of petitioner on the charge against him, has, and will punish him for the exercise of rights, privileges and immunities secured him by the federal Constitution and laws, and has, and will deter him and others similarly situated from the future exercise of these rights, privileges and immunities, for if Louisiana Statute 14:68 under which he is prosecuted makes petitioner's conduct criminal, then R.S. 14:68 is unconstitutional as applied, whereas if the statutes are construed so as to save their constitutionality under the federal Constitution, there is no evidence upon which petitioner may be convicted, consistent with the due process of law required by the Fourteenth Amendment.

7. The arrest and prosecution of petitioner, Dr. Bertrand A. O. Tyson, has been and is being carried on with the sole purpose and effect of harassing petitioner and of punishing him for, and deterring him from exercising his constitutionally protected rights of free speech and assembly to protest the conditions of racial discrimination which the State of Louisiana now maintains by statute, ordinance, regulation, custom, usage, force and practice, and to urge Negroes, the victims of this discrimination, to register for voting in federal and state elections, free of racial discrimination. The harassment of petitioner is pursuant to a policy of racial discrimination which is now encouraged, followed and enforced by legislation, and by action of the executive and Judicial branches, of the State of Louisiana.

III.

8. By reason of the foregoing, petitioner is being pros-

ecuted for acts done under color of authority derived from the federal Constitution and laws providing for equal rights, that is, United States Const. Amends. I, XIV, XV; 42 U.S.C., sec. 1971, 1983, 1985 (1958) and Civil Rights Act of 1964, and for refusing to do acts on the ground that they would be inconsistent with the Constitution and laws cited. Also by reason of the allegations of paragraphs 1 to 7 above and more particularly of paragraph 9 below. Petitioner has been denied, is being denied, and cannot enforce in the Courts of the State of Louisiana rights under the cited federal Constitutional and statutory sections providing for the equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

IV.

9. Petitioner is unable to enforce his federal rights in the state courts of Louisiana and particularly in the 19th Judicial District Court, because those courts are hostile to petitioner by reason of race and his civil rights' activity and by reason of the commitment of those courts to enforce Louisiana's policy of racial discrimination. In the District Court for East Baton Rouge Parish where petitioner will be tried:

   (a) District Court Judges are elected for terms of four years at elections at which Negroes have been systematically denied the right to vote by reason of race in violation of the Fifteenth Amendment.

   (b) Negroes are systematically excluded from the juries by reason of race.

(c) Criminal defendants charged with offenses arising out of demonstrations and other exercise of their equal civil rights have usually been held to answer under excessive and exorbitant bail and if convicted maximum imposition of sentence is imposed.

(d) Negro defendants, Negro witnesses and Negro attorneys are addressed by their first names, as a mark of contempt and racial discrimination in violation of the Equal Protection Clause.

(e) The Court sits in a community which is hostile to and inflamed against Negroes and, in particular, hostile to and inflamed against persons like petitioner who actively exercise his federal Constitutional rights by working in a lawful and peaceful manner to achieve the equal rights of Negroes and of all persons within the State of Louisiana and the United States.

V.

10. Petitioner attaches hereto and makes a part hereof, the same as if written in extenso, the following documents filed in the State proceedings:

1. Certified copy of Bill of Information
2. Certified copy of Application for Particulars
3. Certified copy of Motion to Quash
4. Answer to Application for Particulars (certified)
5. Memoranda in support of Motion to Quash (certified)

6. Memoranda opposing Motion to Quash (certified)

7. Certified copy of Extract of minutes in *State v. Tyson* No. 52,627 Criminal

WHEREFORE, petitioner prays that this criminal proceeding be removed from the 19th Judicial District Court for East Baton Rouge, Louisiana, for trial pursuant to 28 U.S.C. sec. 1446 (1958) since the proceedings removed are criminal, no bonds or filing fees are required with this petition.

(b) That the Court grant petitioner such other relief from time to time as to it may appear just and reasonable for the protection of petitioner's rights herein.

By Attorney:

.....

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

VERIFICATION

I, Murphy W. Bell, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and of the U. S. District Court for the Eastern District of Louisiana.

That I am the duly authorized attorney for petitioner herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are true except such as are stated on information and belief;

That as to subject matter I believe the petition to be true; and

That I sign this verification on behalf of the petitioner, because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowledge than the petitioner.

MURPHY W. BELL

Sworn to and subscribed to before me
this 30th day of March, 1965.

NOTARY PUBLIC

APPENDIX E.

IN THE

UNITED STATES COURT OF APPPEALS

FOR THE FIFTH CIRCUIT

No. 22571

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

DR. BERTRAND A. O. TYSON, upon his oath deposes:

That he is the Dr. Bertrand A. O. Tyson charged in Bill of Information No. 52,627 in the 19th Judicial District for East Baton Rouge Parish, Louisiana; that he removed said prosecution to the District Court for the Eastern District of Louisiana, Baton Rouge Division

because he is denied and cannot enforce in the State Courts of Louisiana, his federal rights, including those guaranteeing equal protection of the laws and due process of law.

Affiant deposes that he is denied and cannot enforce his federal rights in the Louisiana Courts because:

1) He is a Negro, who received wide spread local and national publicity as a leader of the Plaquemine, Louisiana protests against discrimination during 1963 and 1964.

2) He has continued to assert his leadership in the Negroes' effort to abolish restrictive voting and obtain equal rights of all citizens.

3) Mr. Sargent Pitcher, Jr., the present District Attorney of the 19th Judicial District of Louisiana was elected to his present position by running on a strong segregationist platform, citing his previous efforts at temporarily puting the NAACP out of business in Louisiana (see *NAACP v. Gremillion* (37 _____ U.S. _____) ; he boasts of being one of the founders and charter members of THE WHITE CITIZENS COUNCIL, INC. of Louisiana.

4) That during the demonstrations by Southern University students in 1961, he caused hundreds of persons to be arrested on various assorted charges, and placed under heavy bail usually ranging from $1500.00 to $3000.00 for such misdemeanors as obstructing the sidewalks, disturbing the peace, etc; That only 2 or 3 were ever brought to trial. Others were tried, but never sentenced.

5) That the Judges of the 19th Judicial District

who ran for office against opposition publicly declared that they would discharge their responsibility to the electorate by maintaining "our way of life," i.e. Segregation of the races; that all of the elected executive, judicial and other officials of the 19th Judicial District have pledged to maintain segregation or other wise discriminate against Negroes.

6) That affiant is not guilty of the offense charged, i.e., unauthorized use of a movable, he having truly leased an automobile from the rental car agency which rental was evidenced by a written lease; that the car was returned in good repair a few days after the contract term had expired (but Louisiana Revised Civil Code makes legal a "holding over after expiration of lease"), and all charges paid to the company and an acquittance granted therefor.

7) That although affiant is a resident of Plaquemine, Iberville Parish, he also practices medicine in the 19th Judicial District area which comprises Baton Rouge, his place of birth.

8) Affiant truly and firmly believe that the State Courts and State Officials, being hostile and unfair to Negroes in general, and more so to Negro Leaders who agitate for equal rights, that he will not be able to enforce his federal rights in the 19th Judicial District Court, or in any Louisiana State Court and that he should be tried in the federal system of Courts as provided by federal law.

9) Affiant further deposes that because of his work and efforts in civil rights activities

that his income has diminished and that he is heavily in debt; that he cannot afford to litigate in both the State and Federal Courts at the same time.

Baton Rouge, Louisiana May 17, 1965.

Signed:_____
Dr. Bertrand A. O. Tyson

Sworn to and subscribed before me, this _____ day of May, 1965.

_____
MURPHY W. BELL
Notary Public
East Baton Rouge
State of Louisiana

CERTIFICATE

I certify that a copy of the foregoing affidavit has been served upon Mr. Sargent Pitcher, Jr. by mailing a copy thereof to his address Court House, Baton Rouge, Louisiana.

Baton Rouge, La. May _____ 1965.

_____
Murphy W. Bell

APPENDIX F.

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Criminal No. 1585

DR. BERTRAND A. O. TYSON,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

APPLICATION FOR PRODUCTION OF RECORDS DIRECTED TO SARGENT PITCHER, JR., DISTRICT ATTORNEY

ON MOTION of Murphy W. Bell, attorney for Dr. Bertrand A. O. Tyson, petitioner herein and upon informing the Court that petitioner has alleged herein that the "arrest and prosecution of petitioner, Dr. Bertrand A. O. Tyson has been and is being carried on with the sole purpose and effect of harrassing petitioner and of punishing him for, and deterring him from exercising his constitutionally protected rights of free speech and assembly to protest the conditions of racial discrimina-

tion which the State of Louisiana now maintains by statute, ordinance, regulation custom, usage, force and practice," (see article 7), that SARGENT PITCHER, JR. Esq., District Attorney of the Parish of East Baton Rouge, has in his possession complete records of all of the arrests, prosecutions and dispositions of cases ensuing from protests against racial discriminations originating in East Baton Rouge Parish, particularly since November, 1961 and being more particular the following cases:

1. State of Louisiana Vs. Weldon Rougeau
2. State of Louisiana Vs. Charles McDew
3. State of Louisiana Vs. Robert Zellner
4. State of Louisiana Vs. Patricia Tate
5. State of Louisiana Vs. Ronnie M. Moore
6. State of Louisiana Vs. Arthur L. Jelks
7. State of Louisiana Vs. Joan Trumpower

That the production of these records and the status of the arrests and disposition of the cases, particularly, those enumerated above, is necessary to show a pattern of intimidation and arbitrary arrest and prosecution without any real intention of obtaining a valid conviction by the State of Louisiana in regard to persons protesting State-imposed racial discrimination.

That further in connection with said records the presence of SARGENT PITCHER, JR., District Attorney is necessary in order to explain and interpret said records and the present status of said cases.

WHEREFORE, considering the foregoing, IT IS ORDERED that SARGENT PITCHER, JR., DISTRICT ATTORNEY OF EAST BATON ROUGE bring and produce all of the above-mentioned records in open Court on the 6th day of May, 1965 at 9:00 A.M., or to any other date which this cause may be continued.

Baton Rouge, Louisiana, May ....., 1965.

U. S. DISTRICT JUDGE

Submitted By:

Murphy W. Bell Atty. for
Dr. Bertrand A. O. Tyson

APPENDIX G.

IN THE

UNITED STATES COURT OF APPPEALS

FOR THE FIFTH CIRCUIT

Criminal Nos. 1585

DR. BERTRAND A. O. TYSON

versus

STATE OF LOUISIANA

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION FOR STAY PENDING APPEAL

(1) On March 30, 1965 a Removal Petition was filed on behalf of Dr. Bertrand A. O. Tyson appellant herein seeking to remove his criminal prosecution which was presently pending in the 19th Judicial Court of East Baton Rouge Parish, Louisiana.

Dr. Tyson is a Negro citizen of Iberville and a leader of the NAACP and CORE and other Negro "uplift" Organizations.

The jurisdiction of the District Court was invoked

under 28 U.S.C. Sec. 1443 (1), (2) (1958). An oral motion was made at the conclusion of argument on the motion to remand for as stay pending appeal to this Honorable Court.

(2) On May 10th 1965 the District Attorney of the 19th Judicial District Court filed in the District Court his *MOTION IN OPPOSITION TO THIS HONORABLE COURT'S VERBAL ORDER OF APPEAL WITH STAY ORDER* all as will appear from a copy of the attached motion and by reference to the record. The District Judge summarily and ex parte recalled and vacated the stay that was issued May 6, 1965.

(3) Unless the remand order is stayed forthwith petitioner-appellant will suffer irreparable injury. The pending information against petitioner, Dr. Bertrand A. O. Tyson, will probably be set for trial before effective review of the District Court Judgment can be had. Prosecution in the state courts serves no legitimate state concern if the removal is proper. It does (A) take petitioners-appellants to trial in a forum where Congress has directed they not be tried, a forum where by their allegations they cannot effectively enforce their federal constitutional and statutory rights, (B) subject them to the restraints of the state criminal process during the very period when their right to federal removal is being tested, (C) potentially moot the question of the propriety of the removal, and (D thus punish them for exercising, and inhibit the exercise in the future of their First and Fourteenth Amendment freedoms.

(4) Stays pending appeal of remand orders in similar cases have recently been issued in *Baines v. Danville*,

321 F. 2d 643 (4th Cir. 1963), and *Rachel v. Georgia*, 5th Cir., No. 21,354 (unreported order 3/12/64). In *Georgia v. Tuttle*, 32 U. S. L. week 3446, decided June 22, 1964, the Supreme Court sustained the Court of Appeals of the Fift Circuit in the *Rachel* case, by denying the petition of the State of Georgia for writs of mandamus and prohibition to vacate the stay. The Civil Rights Act of 1964 specifically amended 28 U.S.C. 1447 (d) to allow the right of appeal in cases of this type. Disallowance of a stay of state criminal processes will defeat the Congressional will.

WHEREFORE, petitioner-appellant respectfully prays:

(A) that the remand order of the District Court be forthwith stayed pending review of that order by this Court;

(B) that the Court grant petitioner-appellant such other relief from time to time as to it may appear just and proper.

May 11, 1965

By Attorney:

Murphy W. Bell
971 South 13th St.
Baton Rouge, La.
348-3572

APPENDIX H.

HISTORY OF L.R.S. 14:68

Acts of 1892, No. 30:

> Section 1. . . . That whoever shall unlawfully and maliciously take and ride, drive or otherwise work any horse, mule, ox or oxen, the property of another, without the consent of the owner shall be guilty of a misdemeanor and upon conviction shall be fined . . .

Acts of 1914, No. 168

> . . .
>
> Section 1. . . . That it shall be unlawful and a misdemeanor for any person, whether an employee of the owner of the automobile or not, to take from any garage, public or private, or from the street where said automobile is standing, any automobile belonging to another and use same without the consent of the owner of said automobile.
>
> . . .

Acts of 1934, No. 209

> . . .
>
> Section 1. . . . That whoever shall milk a cow, the property of another, without the consent of the owner, shall be guilty of a misdemeanor . . . .

Acts of 1938, No. 286, section 12, sub. i.

> Any person who shall drive a vehicle, not his own, without the consent of the owner thereof, and with intent temporarily to deprive said own-

> er of his possession of such vehicle, without intent to steal the same, shall be guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owners consent on a previous occasion to the taking or driving of such vehicle by the same or a different person; . . . .

Acts of 1942, No. 43, section 1, Article 68:

> Unauthorized use of movables is the intentional taking or use of any movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable according to the law pertaining to civil matters, is immaterial.
>
> ...

The only cases construing or otherwise dealing with 14:68 as it presently reads, (Acts Of 1942) are: *State v. Clayton*, 236 La. 1093, 110 So. 2d 111 (1959); *State v. Kelley*, 241 La. 224, 128 So. 2d 18 (1961).